

Abel's Questions Re Passages:

A. Downstream Conveyance System

- 1) Does the evidence show if Island County was contacted to see what their requirements are, or if permits are required to accomplish what's spelled out, or what it will cost? Staff Report, #8, p. 23?

WEAN's Answer:

There is no documentation of contact between the Langley Planning Officer/SEPA Responsible Official and the Island County Planning and Public Works Departments.

- 2) Regarding the performance bond, does that apply to the city's portion of the downstream drainage system or the county's or both? Staff Report, Supplement No. 1, 5/20/10, # 1, Page 4.

WEAN's Answer:

Since the bond will be held by Langley, it is presumably up to Langley to determine what it may be available for.

- 3) Although the applicant will monitor the ditch for 3 years after 75% buildout, how do we know when that will occur?.

WEAN's Answer:

This determination will presumably be discretionary on the part of the Langley Planning Officer.

What is the rationale for using 3 years from 75% buildout occupancy to trigger monitoring? Cort, PAB Minutes, 3/24/20, ¶6, p. 4

WEAN's Answer:

The rationale for these criteria is not present in the record.

- 4) Does the "downstream drainage system" include the County's outflow as well as the city ditch? Staff Report, Supplement No. 1, 5/20/10, # 1, p. 4.

WEAN's Answer:

The environmental appellants have assumed it did, but there is no documentation so specifying.

- 5) Who monitors the system or pays bond if developer leaves before 75% buildout or if the buildout never happens? Cort, PAB Minutes, 3/24/20, ¶6, p. 4

WEAN's Answer:

Monitoring of impacts to the system in these circumstances is not addressed in any condition placed on the project.

- 6) What happens if there is a system failure before monitoring begins? Cort, PAB Minutes, 3/24/20, ¶6, p. 4

WEAN's Answer:

In terms of the project, nothing. If the system failed when buildout was, e.g. 50% complete it would be presumed that the project bore no responsibility for the failure.

7) What does “buildout occupancy” mean? Staff Report, #6, p. 23

WEAN’s Answer:

The term is not defined. We have assumed that it referred to occupancy of the specified percentage of residences in the development. Impacts such as stormwater runoff will begin before and occur regardless of whether or not the residences are actually sold and occupied.

8) “The applicant shall be solely responsible for making any improvements to the Island County portion of the system that may be identified by Island County to accommodate likely impacts.” When will this happen? Staff Report, #8, p. 23

WEAN’s Answer:

It is unknown if or when this will occur, just as it is unknown whether any work on the ditch and outfall or the decision that no work is needed will undergo environmental review per SEPA.

B Water line through wetland

1) Where in the record is there evidence to support other options were explored, or if applicant applied for an exception. LMC 16, 20. 080

10/19/10

WEAN’s Answer:

See our answer to Waterman Question #2, as well as

WEAN’s Answers of 10-10-04: D- WETLANDS 1- Alternative Water Line Routes.

Questions of the Record; Langley Passage (10/19/10)
Robert Waterman

Sewer

1. Where in the record is the agreement between the applicant and the Woodside subdivision to tie into the latter's sewer and lift station documented?

WEAN's Answer:

Not Addressed.

Waterline

2. Where is it documented that the City is legally required to explore options for waterline options?

WEAN's Answer:

*NOTE: The Langley Municipal Code contains numerous formatting and other typographical errors. Below, we refer to portions of the code as they are denoted in the code; however, these do not always make sense; for example, C.1. is followed by C.B2.

Utilities in wetlands and buffers are not outright permitted uses; they are prohibited. LMC 16.20.80A.1; §80A.2. Placement of utilities in wetlands and buffers for the Langley Passage development requires granting of an exception and approval by the Planning Advisory Board. LMC 16.20.80C.1. There must be "no other feasible and reasonable alternative to the proposed development with less impact". LMC 16.20.80C.B2.a. "A description of alternatives considered must be included in the exception requests." *Ibid*. No such description was performed or is present in the record. Both Ryan Goodman and Larry Cort conceded that no other landowners were contacted and that installing the water line planned in the adopted Comprehensive Water System Plan would eliminate the need for placing this utility in the wetland and its buffer.

See *WEAN's Answers of 10-10-04*:

D- WETLANDS 1- Alternative Water Line Routes.

Section 16.20.080 Wetlands and streams – permitted uses, uses requiring alteration approval (including reasonable use provisions); exceptions.

A. Permitted uses.

1. All activities and uses shall be prohibited in wetlands and streams and their buffers except as expressly provided in this chapter (see 2 and 3, below). All feasible and reasonable measures shall be taken to avoid and minimize impacts to wetlands and streams.

2. All wetlands and streams regulated by this chapter may be used in an emergency situation to provide water to meet fire flow . . .

1. The following uses are permitted subject to prior review by the Planning Official to determine that all conditions are satisfied prior to commencement of activity:

a. Fences . . .

b. Low impact uses and activities . . .

C. Public agency and utility exceptions.

1. If the application of the wetland and stream provisions of this chapter would prohibit a street, road or utility line proposal by a public agency or utility or the installation of necessary utilities for a development proposal by a public agency or utility, the agency, utility or private applicant may

apply for an exception pursuant to this section. The public agency, utility or private applicant shall prepare an application and report justifying the requested exception. Projects affecting Category I and II wetlands, Type 1 or 2 streams or otherwise requiring review and decision by the Planning Advisory Board shall be decided by that board. Projects affecting Category III and Category IV wetlands, and Type 3, 4, or 5 streams shall be decided by the Planning Official.

B 2. Applications for a utility exception shall be reviewed based on the following criteria:

- a. There is no other feasible and reasonable alternative to the proposed development with less impact on the wetland and/or stream and the associated buffer. A description of alternatives considered must be included in the exception requests; and
- b. The proposal minimizes the impact on the wetland and/or stream and buffer and incorporates all reasonable mitigation measures as identified in 16.20.085.B.8; and
- c. Construction techniques shall minimize both long and short-term impacts to the wetland and/or stream and its buffer.

3. Except as provided above, these exceptions do not extend to dredging, to excavation (including peat mining) or to the filling of wetlands or their buffers.

(Ord. 861, 2005)

3. Where in the record are the relative environmental effects to the wetland and buffer of the various waterline options discussed (underground waterline, line raised on pillars, alternative location)?

WEAN's Answer:

They are not.

See *WEAN's Answers of 10-10-04:*

D- WETLANDS 1- Alternative Water Line Routes;

3- Water Pipeline Construction Techniques;

5- Mitigation and maintenance for wetland disturbance.

Water to bluff

4. Where does the record document that the City is responsible for exploring alternative routes/mechanisms for conducting any increase in runoff from the development site?

WEAN's Answer:

This is a legal question, not a question of fact that can be answered based on the evidence in the record. It is not the City's responsibility to explore "alternative routes/mechanisms for conducting any increase in runoff from the development site." This is the applicant's responsibility. Rather, the City's responsibility is to review the application and all the evidence in the record. Based on that review, first the SEPA Responsible Official must determine if SEPA's procedural requirements have been followed and if there are any probable significant adverse environmental impacts that are not mitigated to nonsignificance. If this determination is appealed, it is the Planning Advisory Board's responsibility to determine if the SEPA Responsible Official's determination was clearly erroneous. If the Planning Advisory Board's recommendation to the City Council is appealed, it is the City Council's responsibility to determine if the Planning Advisory Board's recommendation to the Council was correct.

Note that we were told at the start of the proceeding before the City Council that it would be considering WEAN's appeals in two phases: the SEPA appeal and then the preliminary plat appeal. Because this process is still in the SEPA phase, we do not answer this question in relation to the preliminary plat appeal phase.

5. Where is it stated what would constitute "best available science" in establishing the pre-and post-development amount of runoff reaching the bluff?

WEAN's Answer:

Hydrologist Owen Reece addressed this question in his testimony:

Adams asked how the question of whether the water moved to the bluff or to the ditch would be solved scientifically. Reece said it would be nice to have a boring on the other side of Edgecliff, and explained that he would create a hydrogeologic model for the site and the wetlands to study the issue. Reece said that the wetland was a key piece of the hydrology on the site and he speculated that the wetland and aquifer were higher in the wet seasons; lower in the shoulder seasons; and lowest in dry seasons. Reece explained that, in order to understand the fate of water that made it into the wetland, you would need to know how the wetland behaved. Reece said that when the wetland was high the water may be blocked by the road, but when the water was low the water may stay subsurface and go directly out the face of the bluff. Reece said that he would monitor the hydroperiod to find out more about the wetland; monitor the water levels; and model the overall behavior of the wetland. Reece said that this information might determine how the wetland was functioning under the current circumstances, and how it might function with the development.

Adams asked about the proposed mitigation measures in the MDNS and read mitigation measure one. Adams questioned if this was the type of monitoring that Reece had talked about. Reece said no, the measure appeared to be a loosely specified one-time monitoring requirement. Reece said that you would need to monitor the site continuously for at least a year to understand how the wetland was functioning.

...

Erickson questioned Reece about the minimum amount information that needed to be developed to determine if there was an impact. Reece said that there were two approaches.

1. Monitor and mitigate. Reece said that this approach was being proposed for the project and would need to be enhanced. Reece explained that it would be hard to observe any change to the drainage because hydrology and climate were always different. Reece said that, to observe any changes, the City would need to collect a lot of data, perhaps using continuous monitoring over a five-year period. Reece said that he would place a flume in the ditch and collect the water every 15 minutes or hour to analyze the impacts; monitor the level of the wetland; and potentially measure groundwater levels.
2. Assume worst and evaluate now. Reece said that an approach that assumed the worse would utilize an increase 728,000 or 820,000 gallons per year and analyze it and to see what would happen if all the water went to the slope or the ditch. Reece said that a

hydrogeologist could run a slope stability model to determine the change in the groundwater and the effect on slope stability, and he said that the effect of all the water moving to the drainage system could also be analyzed. Reese said that this approach to the site would be a better way to go in evaluating the site.

Erickson concluded his questioning of Reese.

Doug Kelly, attorney for the applicant, questioned if Reese had a chance to review the Varljen report dated March 1, 2009. Reese said yes. Kelly read the last paragraph of the report and asked if Reese disagreed with the statement. Reese said that he agreed with portions and disagreed with portions. Reese said that he agreed with the concept that you needed to evaluate the wetland and the conveyance system to determine if it could handle the additional water, and agreed that if the water was properly managed at the discharge points that it would not cause an issue. Reese said that he did not agree with the statement that all water would go into the wetland and therefore into the ditch. Kelly asked why he disagreed. Reese said that it hadn't been studied, and that no one had looked at it over the seasons. Reese said that the report didn't look at what happened in the shoulder seasons and dry seasons.

Kelly asked if it was safe to say that Reese would not know what would happen to all the water until he had studied it for two, three or five years. Reese said that it was a complex scientific question to determine how much water would leave the wetland, and a simplifying assumption for the site would be analyzing all the water going each way: to the bluff or to the ditch. Kelly asked if Reese felt that the opinions rendered by HWA and Varljen were based on inadequate information. Reese said yes. . . .

Kelly asked if Reese believed that the deep borings taken on the site did not provide any information regarding the amount of water reaching the bluff. Reese said that the deep borings did not answer the question of the eventual fate of the water. Kelly asked if a boring drilled on the other side of the road would provide additional information about the amount of water reaching the bluff. Reese said that it would not; the amount of water was a difficult scientific question to answer but could be done. Kelly asked Reese if he thought another boring on the other side of the road would help. Reese said that he did not pretend to be here to determine the specifications for the site evaluation and he said that additional information was needed to determine the hydrologic conditions on the site. Reese said that in 2007 the test pits studied the site up to 10 feet deep and this was expanded through the latest analysis of the site to also consider the wetland. Reese said that he thought that the analysis should now be expanded one more time to determine how the water eventually reached Puget Sound. Reese asked what would happen if all the water moved to bluff, and what would happen if it all went to the ditch.

Planning Advisory Board Minutes, p. 7-9; June 2, 2010.

**Please refer to WEAN's Answers of 10-10-04:*

A- GENERAL HYDROLOGY 3- Hydrology and scientific uncertainty;

C- Bluff 4- Significance of Increased Water Flows to Bluff.

6. The record documents that there is agreement that slides of the bluff have periodically occurred along the north side of Edgecliff Drive. Since slides may reasonably be expected to occur in the

future, where in the record is it documented how future slides would be determined to be the direct result of alterations resulting from the proposed development.

WEAN's Answer:

Please see *WEAN's Answers of 10-10-04*:

- C- Bluff 1- Scientific refutation of USGS no increase in groundwater standard;*
- 2- Increased discharge of water towards bluff;*
- 3- Standards for project-caused increased flow of ground water;*
- 4- Significance of Increased Water Flows to Bluff.*

7. Where are the reasons that led the City Staff to “steer” the applicant to consider mitigation via infiltration vs. a tight line to conduct water to the toe of the bluff documented?

WEAN's Answer:

Not Addressed.

8. Where in the record is the “wetland mitigation plan” presented? (see May 13, 2020 revised MDNS document).

WEAN's Answer:

Please see *WEAN's Answers of 10-10-04*:

- D- WETLANDS 5- Mitigation and maintenance for wetland disturbance.*

Drainage ditch

9. Where does the record document Island County’s agreement to maintain and/or modify the portion of the drainage ditch east of the Langley City Limits?

WEAN's Answer:

There is no such agreement.

10. Where is it documented that “reasonable efforts” were made to quantify the destination of water collecting in the wetland?

WEAN's Answer:

If what is meant by this question is the quantity of water that will flow to different destinations from the wetland, please see the answer to question 5, above. No efforts were made to quantify the fate of water flowing from the wetland in either absolute or relative (proportional) terms.

Mitigation

11. Where is it documented that the SEPA Responsible Officer has the option to require mitigation to address possible potential adverse effects for a proposal that is judged to have no probable significant adverse environmental effects?

WEAN's Answer:

Not addressed.

12. Where is it documented that imposition of mitigations automatically means that the proposal will have probable adverse effects on the environment and prohibit issuing a MDNS?

WEAN's Answer:

Not addressed.

Pedestrian facilities

13. Where is it documented that alternative sites exist for park or pedestrian walkways “within one-half mile of Langley Passage”?

WEAN’s Answer:

Not addressed.

Responsibility of SEPA responsible officer

14. Where in the record is it documented that the SEPA Responsible Official adequately considered a tight line alternative for conducting any runoff from the development site?

WEAN’s Answer:

Not addressed.

15. Where is it documented that the SEPA Responsible Official concluded that, as of January 30, 2007, the proposal would have a “probable significant adverse environmental impact on neighboring properties and the Edgecliff bluff? (Initial appeal brief of LCAA, 75.5; May 10, 2010).

WEAN’s Answer:

Not addressed.

16. Where in the record is the SEPA Responsible Official’s “worst case scenario” presented?

WEAN’s Answer:

No “worst case scenario” is presented.